

Decision **ALTERNATE DRAFT DECISION OF ALJ KENNEY** (Mailed 3/4/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to issue, sell, and deliver one or more series of Debt Securities and to guarantee the obligations of others with respect to the issuance of Debt Securities, the total aggregate principal amount of such long-term indebtedness and guarantees not to exceed \$2 billion; to execute and deliver one or more indentures; to sell, lease, assign, mortgage, or otherwise dispose of or encumber utility property; to issue, sell and deliver in one or more series, an aggregate amount not to exceed \$200 million par or stated value of First Preferred Stock -- \$25 Par Value; to issue an aggregate \$2 billion of short-term debt obligations; to utilize various debt enhancement features; enter into interest-rate hedges; and for an exemption from the Commission's Competitive Bidding Rule. (U 39 M)

Application 04-05-041
(Filed May 27, 2004)

OPINION GRANTING IN PART AND DENYING IN PART PACIFIC GAS AND ELECTRIC COMPANY'S PETITION TO MODIFY DECISION 04-10-037

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O P I N I O N**1. Summary**

This Opinion grants in part and denies in part the petition to modify Decision (D.) 04-10-037 filed by Pacific Gas and Electric Company (PG&E). The petition is granted to the extent it requests the following modifications to D.04-10-037. First, long-term debt and preferred stock that is issued pursuant to D.04-10-037 will not be deemed void if PG&E fails to maintain its capital structure in accordance with Commission requirements. Second, PG&E may use the long-term debt and preferred stock authorized by D.04-10-037 to replace short-term debt previously issued by PG&E to finance capital expenditures. Finally, Ordering Paragraph (OP) 6 is corrected to provide PG&E with authority to issue First Mortgage Bonds as primary obligations.

PG&E's petition is denied to the extent it requests broad authority to use the long-term debt and preferred stock authorized by D.04-10-037 for every purpose listed in Pub. Util. Code Section 817.¹ Instead, PG&E may file an advice letter to request authority to use the long-term debt and preferred stock authorized by D.04-10-037 for those purposes listed in Section 817 when PG&E can demonstrate a firm and quantifiable need to do so.

PG&E's petition is also denied to the extent it requests authority to issue debt secured by its accounts receivable and to renew an existing \$650 million accounts receivable (A/R) credit facility when it expires in 2007. PG&E may seek to renew the A/R facility when it expires in 2007 if it can demonstrate that the accounts receivable supporting the facility can be devoted exclusively to the

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

procurement of gas and electricity for PG&E's customers at the discretion of PG&E or the Commission.

2. Background

Decision 04-10-037 authorized PG&E to do a number of things pursuant to Sections 701.5, 816 - 830, and 851, including the following:

1. Issue \$1.538 billion of long-term debt and preferred stock in any combination, as long as the selected combination results in a capital structure that complies with Commission requirements.
2. Use the \$1.538 billion of authorized long-term debt and preferred stock for only the following purposes:
 - a. Finance capital expenditures.
 - b. Retire long-term debt.
 - c. Redeem preferred stock.
3. Pledge gas and electric accounts receivable for the purpose of procuring gas and electricity for PG&E's customers.
4. Issue contingent First Mortgage Bonds as security for other debt.

On November 29, 2004, PG&E filed a petition to modify D.04-10-037. Notice of the petition appeared in the Commission's Daily Calendar on December 1, 2004. There were no protests or other responses to the petition.

PG&E's petition is subject to Commission approval pursuant to Sections 816 *et seq.*, and 851. The Commission has broad discretion under these statutes to approve, modify, or reject PG&E's petition.

3. PG&E's Petition to Modify D.04-10-037

PG&E requests four modifications to D.04-10-037. Each of the requested modifications is addressed below.

i. Compliance with the Authorized Capital Structure

a. PG&E's Request

Decision 04-10-037 authorized PG&E to issue \$1.538 billion of long-term debt and preferred stock, in any combination, as long as the selected combination results in a capital structure that complies, on average, with the Commission-adopted capital structure during the period the adopted capital structure is in effect.² PG&E requests that this condition be rescinded.

PG&E asserts that conditioning its authority to issue debt and equity on compliance with the Commission-adopted capital structure creates the possibility that securities issued in compliance with D.04-10-037 might subsequently fall out of compliance due to unexpected events.³ As a result, PG&E may not be able to obtain the required legal opinions regarding “due authorization” and “validity” that are necessary for securities to be sold to the public.

PG&E also observes that under Section 825, utility debt and equity may be deemed void if it does not comply with a Commission order.⁴ PG&E represents that it will have to disclose to potential investors the risk that debt and equity issued pursuant to D.04-10-037 might fall out of compliance and be deemed void. PG&E believes this risk will cause investors to demand a higher return, thereby resulting in higher costs for PG&E and its ratepayers.

² D.04-10-037, *mimeo.*, p. 16 and OP 4.

³ For example, the Financial Accounting Standards Board could adopt a new accounting standard that alters PG&E's capital structure.

⁴ Section 825 states, in relevant part, as follows: “All [stock and debt]...of a public utility, issued without an order of the commission...or not conforming...to any of the provisions which it is required by the order of authorization to contain, is void.”

b. Discussion

We agree with PG&E that investors might interpret D.04-10-037 as requiring that long-term debt and preferred stock issued pursuant to the Decision be deemed void if PG&E fails to maintain its capital structure in accordance with Commission requirements. The possibility that long-term debt and preferred stock might be deemed void could increase investors' perception of risk, thereby resulting in higher cost of capital for PG&E and its ratepayers with no offsetting benefit. To foreclose this possibility, we will modify D.04-10-037 so that long-term debt and preferred stock issued pursuant to the Decision will not be deemed void if PG&E fails to maintain its capital structure in accordance with Commission requirements.⁵

Our decision to hold investors harmless does not relieve PG&E of its obligation to maintain its capital structure in accordance with Commission requirements established in the annual cost of capital proceeding or elsewhere.⁶ If PG&E fails to do so, we may fine PG&E, impose other sanctions, or take other appropriate actions.

⁵ Our decision to hold investors harmless is consistent with Section 825 which states, in relevant part, as follows: "No failure in any other respect to comply with the terms or conditions of the order of authorization of the commission shall render void any [long-term debt or preferred stock]...except as to a corporation or person taking it otherwise than in good faith and for value and without actual notice."

⁶ For example, D.03-12-035, OP 9, requires PG&E to maintain a capital structure in accordance with the conditions stipulated in the settlement adopted by D.03-12-035.

ii. Authorized Uses of Long-Term Debt and Preferred Stock**a. PG&E's Request**

Decision 04-10-037 authorizes PG&E to issue \$1.538 billion of long-term debt and preferred stock for three purposes: finance capital expenditures, retire bridge loans, and redeem preferred stock. PG&E requests that D.04-10-037 be modified to allow PG&E to use the long-term debt and preferred stock authorized by the Decision for every purpose listed in Section 817.⁷

PG&E argues that its request is consistent with Commission precedent for PG&E and other utilities. PG&E contends that if the Commission intends to implement a new and more restrictive approach, it should do so in a rulemaking proceeding and apply it to all utilities.

PG&E also claims that limiting its use of long-term debt and preferred stock may have unintended consequences. For example, PG&E might miss an opportunity to refinance existing debt if PG&E must apply for authority to use the \$1.538 billion for other purposes. PG&E also notes that it often uses short-term debt to temporarily fund some of its capital expenditures, and then replaces the short-term debt with long-term financing. However, the restrictive purposes for which long-term debt and preferred stock may be issued under D.04-10-037 would not allow PG&E to do this.

⁷ Under Section 817, the Commission may authorize a public utility to issue long-term debt and preferred stock for the following purposes: (a) acquire property; (b) construct, complete, extend, or improve its facilities; (c) improve or maintain its service; (d) discharge or lawfully refund its obligations; (e) finance the acquisition and installation of electrical and plumbing appliances and agricultural equipment which are sold by other than a public utility, for use within the service area of the public utility; (f) reorganize or readjust its debt or capitalization upon a merger, consolidation, or other reorganization; (g) retire or replace outstanding debt or equity; and (h) reimburse previous expenditures for the aforesaid purposes, except maintenance of service and replacements, where the money for such expenditures was not secured by or obtained from the issuance of stocks or debt.

b. Discussion

We agree with PG&E that D.04-10-037 should be modified to allow PG&E to use the long-term debt and preferred stock authorized by the Decision to replace short-term debt that was previously issued to finance capital expenditures. The adopted modification is consistent with D.04-10-037, which authorized PG&E to issue long-term debt and preferred stock to finance capital expenditures.

We next consider PG&E's request to modify D.04-10-037 to allow PG&E to use the long-term debt and preferred stock authorized by the Decision for every purpose listed in Section 817. Section 817 states, in relevant part, as follows:

Section 817: A public utility may issue stocks and [long-term debt]...for...the following purposes and no others:

- (a) For the acquisition of property.
- (b) For the construction, completion, extension, or improvement of its facilities.
- (c) For the improvement or maintenance of its service.
- (d) For the discharge or lawful refunding of its obligations.
- (e) For the financing of the acquisition and installation of electrical and plumbing appliances and agricultural equipment which are sold by other than a public utility, for use within the service area of the public utility.
- (f) For the reorganization or readjustment of its indebtedness or capitalization upon a merger, consolidation, or other reorganization.
- (g) For the retirement of or in exchange for one or more outstanding stocks or stock certificates or other evidence of interest or ownership of such public utility, or bonds, notes, or other evidence of indebtedness of such public utility, with or without the payment of cash.
- (h) For the reimbursement of moneys actually expended from income or from any other money in the treasury of

the public utility not secured by or obtained from the issue of stocks...or bonds, notes, or other evidences of indebtedness of the public utility, for any of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purposes for which such expenditure was made.

PG&E's request is subject to Section 818 which states, in relevant part, as follows:

Section 818: No public utility may issue [long-term debt or preferred stock]...unless...it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the...proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that...such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

We interpret Section 818 as providing the Commission with authority to grant PG&E's request to use the \$1.538 billion of long-term debt and preferred stock authorized by D.04-10-037 for every purpose listed in Section 817 only if the Commission finds that PG&E has a reasonable need to issue debt and preferred stock for each of these purposes.

In its petition, PG&E speculates there might be an opportunity sometime in the future to issue long-term debt and preferred stock for purposes other than those authorized by D.04-10-037. In our opinion, speculation does not provide a sound basis for reaching the finding required by Section 818 that PG&E has a reasonable need to issue debt and equity. We also believe that it is bad public

policy to grant PG&E blanket authority to issue debt and equity for unknown purposes. For example, it would be ill advised to provide PG&E with authority under Section 817(f) to issue debt for the “reorganization...of its indebtedness or capitalization upon a merger, consolidation, or other reorganization” without any knowledge of the merger, consolidation, or other reorganization.

On the other hand, we agree with PG&E that there may be fleeting opportunities to obtain benefits for PG&E and its ratepayers by issuing the debt and preferred stock authorized by D.04-10-037 for purposes not currently allowed by the Decision. For example, there could be opportunities to lower PG&E’s cost of capital by refinancing outstanding debt at favorable interest rates. So that PG&E may take advantage of such opportunities, we will allow PG&E to file an advice letter for authority to use the \$1.538 billion of long-term debt and preferred stock authorized by D.04-10-037 for purposes not authorized by the Decision when PG&E can demonstrate a firm and quantifiable need to do so. The advice letter process strikes a reasonable balance between PG&E’s desire to have the ability to act quickly to take advantage of passing opportunities and the Commission’s statutory obligation under Section 818 to authorize the issuance of long-term debt and preferred stock only when the Commission finds there is a reasonable need to do so.⁸

We disagree with PG&E’s arguments that (1) it should be authorized to issue debt and equity for purposes for which PG&E has no demonstrated need because the Commission has authorized other utilities to do so, and (2) if the

⁸ Any such advice letter should provide the following information: (i) the amount of long-term debt and preferred stock authorized by D.04-10-037 that will be issued for purposes not currently allowed by the Decision; (ii) when the long-term debt and preferred stock will be issued; (iii) the exact purposes for issuing the long-term debt and preferred stock; and (iv) a demonstration that the requested purposes comply with Section 817.

Commission wishes to change its policy, it should open a rulemaking to consider a revised policy for all utilities. We are unaware of any Commission decision, rule, or policy that explicitly states that utilities should be authorized to issue debt and equity when a utility has no forecasted need to do so.

iii. Authority to Encumber Accounts Receivable

a. PG&E's Request

PG&E has a \$650 million accounts receivable (A/R) facility that provides for the continuous sale of PG&E's accounts receivable and functions as a line of credit. The A/R facility expires in 2007. Decision 04-10-037 denied PG&E's request for general authority to issue debt secured by its accounts receivable and ordered PG&E not to renew its A/R facility when it expires in 2007.⁹

In its petition, PG&E asks the Commission to modify D.04-10-037 to allow PG&E to (1) issue debt secured by its accounts receivable, and (2) renew its A/R facility when it expires in 2007. PG&E represents that its A/R facility is currently PG&E's least expensive short-term debt facility. PG&E also argues that because other utilities have been authorized to use accounts receivable to secure debt, it is unfair to withhold the same authority from PG&E.

b. Discussion

In D.04-10-037, we decided that it was in the public interest to restrict the use of PG&E's accounts receivable as security for other debt. Our reasons for doing so were as follows:

In retrospect, it was fortunate that PG&E's gas accounts receivable were available to be used as collateral for the procurement of gas for PG&E's customers during PG&E's bankruptcy. If PG&E's gas accounts receivable had already

⁹ D.04-10-037, *mimeo.*, pp. 20 – 21.

been pledged as collateral for other purposes, it is possible that PG&E would not have been able to procure adequate supplies of gas for its customers, thereby causing gas shortages with potentially disastrous consequences for California.

We conclude that it is in the public interest to ensure that amounts paid by PG&E's customers will always be available to serve as collateral for the procurement of gas and electricity. Therefore, we will limit PG&E's authority to pledge its gas customer accounts receivable to the sole purpose of procuring gas supplies for PG&E's customers, including flowing gas and storage gas. Similarly, we will limit PG&E's authority to pledge its electric accounts receivable to the sole purpose of procuring electric power for PG&E's customers, including any fuels necessary for PG&E's retained generation plants. The restrictions we place on PG&E's authority to pledge its accounts receivable do not apply to the following: (1) the portion of PG&E's accounts receivable that is sequestered for other purposes pursuant to statutes or Commission orders (e.g., accounts receivable that have been or will be pledged to support PG&E's Rate Reduction Bonds and Energy Recovery Bonds), and (2) PG&E's current credit facility of \$650 million that is secured by PG&E's accounts receivable. PG&E should not renew this credit facility when it expires so that the accounts receivable supporting the credit facility can be used for the purposes authorized by today's Opinion (i.e., to serve as collateral for the procurement of gas and electricity). (D.04-10-037, *mimeo.*, pp. 20 – 21. Footnotes omitted.)

We are not persuaded by PG&E that D.04-10-037 should be modified to provide PG&E with broad authority to use its accounts receivable to secure other debt. One of the key lessons from PG&E's recent bankruptcy is that amounts paid by PG&E's customers should always be available to pay for vital services provided by the utility. As stewards of the public interest, it is our duty to uphold this core principle. This is exactly what D.04-10-037 does.

We are skeptical of PG&E's claim that failure to modify D.04-10-037 could increase PG&E's borrowing costs. Decision 04-10-037 does not affect PG&E's existing A/R facility, which will remain in place until 2007. Thus, there should be no effect on PG&E's borrowing costs, if any, until 2007. Moreover, the Commission has taken significant steps to restore PG&E's financial health in the aftermath of its recent bankruptcy.¹⁰ These steps should help PG&E obtain high credit ratings on its short-term debt when its A/R facility expires in 2007. In fact, we believe that PG&E should be able to obtain the same high credit ratings on short-term debt that are currently possessed by Southern California Edison Company (SCE), Southern California Gas Company (SCG), and San Diego Gas & Electric Company (SDG&E).¹¹ If PG&E obtains the same high credit ratings as these other utilities, PG&E should have no need to encumber its accounts receivable in order to issue low-cost, short-term debt.

Our skepticism is compounded by the fact that D.04-10-037 allows PG&E to pledge its accounts receivable as security for its largest expense, namely, the cost of procuring gas and electricity for its customers.¹² Thus, PG&E can

¹⁰ See, for example, D.03-12-035 (authorizing PG&E to keep \$775 - \$875 million of "headroom," record a \$2.21 billion bankruptcy regulatory asset, and recover the regulatory asset from ratepayers); and D.02-11-026 (authorizing the use of certain surcharge revenues to restore PG&E's financial health).

¹¹ SCE's commercial paper credit ratings from Moody's Investor Services (Moody's) and Standard and Poor's (S&P's) are P-2 and A-2, respectively, the second highest commercial paper ratings issued by these rating agencies. (SCE Form 10Q for the period ending September 30, 2004, p. 25.) SCG's and SDG&E's commercial paper credit ratings from Moody's, S&P's, and Fitch Ratings (Fitch) are P-1, A-1, and F1+, respectively, the highest issued by these rating agencies. (Sempra Energy Form 10-K for the period ending December 31, 2003, p. 27). We take official notice of SCE, SCG's and SDG&E's commercial paper credit ratings pursuant to Rule 73 of the Commission's Rules of Practice and Procedure.

¹² During 2003, PG&E's cost to procure gas and electricity (including fuel to operate PG&E's retained generation) was \$4.4 billion. PG&E's total costs in 2003, including depreciation,

Footnote continued on next page

encumber its accounts receivable to secure a large part of its accounts payables. Because accounts payable are a type of short-term debt, PG&E's request for broad authority to issue debt secured by its accounts receivable has already been granted to a significant degree.¹³ This weakens PG&E's argument that failure to grant its request may result in higher costs for ratepayers.

We do not foreclose the possibility of granting PG&E authority to renew the A/R facility when it expires in 2007. PG&E may seek to renew the facility when it expires in 2007 if PG&E can demonstrate at that time that the entire A/R facility will be available during a crisis to finance the procurement of gas and electricity for PG&E's customers.

iv. Modification of Ordering Paragraph 6

a. PG&E's Request

Finding of Fact (FOF) 14 and Conclusion of Law (COL) 17 of D.04-10-037 indicate that PG&E should be granted authority under Section 851 to issue First Mortgage Bonds (FMBs) as both primary obligations and as security for other debt. However, Ordering Paragraph (OP) 6 only provides authority to issue FMBs as security for other debt. PG&E requests that OP 6 be modified to provide PG&E with authority to issue FMBs as primary obligations.

b. Discussion

It was our intent in D.04-10-037 that PG&E should be authorized to issue FMBs as primary obligations and as security for other debt. Our intent is

interest, and income taxes, were \$9.6 billion. (PG&E Corporation's Annual Report for 2003, p. 16. We take official notice of the Annual Report pursuant to Rule 73.)

¹³ As discussed in more detail, *infra*, D.04-10-037 provided PG&E with authority to secure its debt with contingent First Mortgage Bonds. If PG&E has a need to issue debt secured by its assets, we believe that PG&E can satisfy much or all of this need with contingent First Mortgage Bonds instead of encumbering its accounts receivable.

properly reflected in FOF 14 and COL 17. However, OP 6 only provides authority to issue FMBs as security for other debt; OP 6 inadvertently omits authority to issue FMBs as primary obligations. Therefore, we will modify OP 6 to provide PG&E with authority to issue FMBs as primary obligations.

4. Comments on the Alternate Draft Decision

The alternate draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the service list in accordance with Section 311(g)(1) and Rule 77.7. PG&E filed comments on March 22, 2005. These comments have been reflected, as appropriate, in the final decision adopted by the Commission.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. Decision 04-10-037 authorized PG&E to issue \$1.538 billion of long-term debt and preferred stock, in any combination, as long as the selected combination results in a capital structure that complies, on average, with the Commission-adopted capital structure during the period the adopted capital structure is in effect. PG&E's petition requests that this condition be rescinded.

2. Investors might interpret D.04-10-037 as requiring that the long-term debt and preferred stock issued pursuant to D.04-10-037 be voided under Section 825 if PG&E fails to maintain its capital structure in accordance with Commission requirements.

3. The cost of issuing the long-term debt and preferred stock authorized by D.04-10-037 could increase if investors believe there is a risk that such long-term debt and preferred stock might be voided after it has been issued.

4. Decision 04-10-037 authorized PG&E to issue \$1.538 billion of long-term debt and preferred stock during 2004 – 2008 for three purposes: finance capital expenditures, retire bridge loans, and redeem preferred stock. PG&E asks that D.04-10-037 be modified to allow PG&E to use the long-term debt and preferred stock authorized by the Decision for every purpose listed in Section 817.

5. PG&E has not demonstrated at this time that it has a need to issue the long-term debt and preferred stock authorized by D.04-10-037 for any purpose other than those authorized by the Decision.

6. There may be fleeting opportunities to obtain benefits for PG&E and its ratepayers by issuing the long-term debt and preferred stock authorized by D.04-10-037 for purposes that are not currently allowed by the Decision.

7. The advice letter process provides a means for the Commission to determine relatively quickly if PG&E has a real and quantifiable need to issue long-term debt and preferred stock for purposes not authorized by D.04-10-037.

8. There is no Commission decision, rule, or policy which explicitly states that a utility should be authorized to issue debt and equity when the utility has not forecasted or demonstrated a reasonable need to do so.

9. Except as noted in the following Finding of Fact (FOF), D.04-10-037 authorized PG&E to (i) pledge its gas accounts receivable for the sole purpose of procuring gas supplies for PG&E's customers, including flowing gas and storage gas, and (ii) pledge its electric accounts receivable for the sole purpose of procuring electric power for PG&E's customers, including fuels necessary for PG&E's retained generation plants.

10. The restrictions on PG&E's authority to pledge its accounts receivable described in the previous FOF do not apply to the following: (i) the portion of PG&E's accounts receivable that are sequestered for other purposes pursuant to

statutes or Commission orders, or (ii) the existing \$650 million A/R credit facility that is secured by PG&E's accounts receivable.

11. Decision 04-10-037 ordered PG&E not renew its \$650 million A/R credit facility when it expires in 2007 so that the accounts receivables supporting the facility could be used for the purposes set forth in FOF 9.

12. PG&E requests that D.04-10-037 be modified to allow PG&E to (i) issue debt secured by its accounts receivable, and (ii) renew its A/R facility when it expires in 2007.

13. Decision 04-10-037 does not affect PG&E's existing A/R facility, which will remain in effect until 2007.

14. SCE has the second highest commercial paper credit ratings issued by Moody's and S&P's. SCG and SDG&E have the highest commercial paper credit ratings issued by Moody's, S&P's, and Fitch.

15. In D.03-12-035 and D.02-11-026, the Commission took significant steps to restore PG&E's financial health in the wake of PG&E's bankruptcy. These steps should enable PG&E to obtain high credit ratings on its short-term debt when its current A/R facility expires in 2007.

16. For the reasons set forth in the previous FOF, PG&E should be able to obtain the same high short-term credit ratings that are currently possessed by SCE, SCG, and SDG&E. If PG&E obtains the same high credit ratings as these other utilities, PG&E should have no need to encumber its accounts receivable in order to issue low-cost, short-term debt.

17. For the reasons set forth in the four previous FOFs, it is unlikely that PG&E's borrowing costs will increase if the Commission denies PG&E's petition to modify D.04-10-037 to allow PG&E to (i) use its accounts receivable to secure debt, and (ii) renew its A/R facility when it expires in 2007.

18. It is possible, but not likely, that renewal of PG&E's exiting A/R facility will offer the cheapest source of short-term debt capital in 2007.

19. Decision 04-10-037 allows PG&E to pledge its accounts receivable as security for its gas and electric accounts payable, which represent PG&E's largest expense. Because accounts payable are a form of short-term debt, PG&E's request for broad authority to issue debt secured by its accounts receivable has already been granted to some extent.

20. Except as noted in FOF 10, the following Commission decisions authorized PG&E to pledge its gas accounts receivable for the sole purpose of procuring gas supplies for PG&E's core customers, including flowing gas and storage gas: D.04-10-037, D.04-02-056, D.03-02-061, D.02-03-025, D.01-06-074, D.01-02-050, and D.01-01-062.

21. It was fortunate that PG&E's gas accounts receivable were available to be used as collateral for the procurement of gas for PG&E's customers during PG&E's bankruptcy. If PG&E's gas accounts receivable had already been pledged as collateral for other purposes, it is possible that PG&E would not have been able to procure adequate supplies of gas for its customers, thereby causing gas shortages with potentially disastrous consequences for California.

22. In D.04-10-037, the Commission concluded that it is in the public interest to (i) ensure that amounts paid by PG&E's customers will always be available to serve as collateral for the procurement of gas and electricity, and (ii) limit the use of PG&E's accounts receivable as security for debt to the aforesaid purpose.

23. FOF 14 and COL 17 of D.04-10-037 indicate that PG&E should be granted authority under Section 851 to issue FMBs as primary obligations, but this is not carried through to OP 6 of D.04-10-037.

24. Notice of PG&E's petition to modify D.04-10-037 appeared in the Commission's Daily Calendar on December 1, 2004. There were no protests or other responses to the petition.

Conclusions of Law

1. PG&E's petition to modify D.04-10-037 is subject to Commission approval pursuant to Sections 816 *et seq.*, and 851. The Commission has broad discretion under these statutes to approve, modify, or reject PG&E's petition.

2. In D.04-10-037, the Commission held that long-term debt and preferred stock authorized by the Decision should not be issued if doing so resulted in a capital structure that did not comply with Commission requirements.

3. In order to minimize PG&E's cost of capital, D.04-10-037 should be modified so that debt and preferred stock issued pursuant to the Decision will not be deemed void if PG&E fails to maintain its capital structure in accordance with Commission requirements.

4. Decision 4-10-037 should be modified to enable PG&E to use the long-term debt and preferred stock authorized by D.04-10-037 to replace short-term debt previously issued to finance capital expenditures. This modification is consistent with D.04-10-037, which authorized PG&E to issue long-term debt and preferred stock to finance capital expenditures.

5. Under Section 818, the Commission may modify D.04-10-037 to allow PG&E to use the \$1.538 billion of long-term debt and preferred stock authorized therein for every purpose listed in Section 817 only if the Commission finds that PG&E has a need to issue debt and preferred stock for each listed purpose.

6. PG&E's request to modify D.04-10-037 to allow PG&E to use the \$1.538 billion of long-term debt and preferred stock authorized therein for every

purpose listed in Section 817 should be denied pursuant to Section 818 for the reasons set forth in FOF 5 and the previous COL.

7. Payments by PG&E's customers should be used first and foremost for the procurement of gas and electricity provided to PG&E's customers.

8. PG&E's request to modify D.04-10-037 to allow PG&E to use its accounts receivable to secure other debt should be denied for the reasons set forth in the previous Conclusion of Law (COL) and FOFs 13 through 22.

9. PG&E should be allowed to seek authority to renew the A/R facility when it expires in 2007 if PG&E can demonstrate at that time that the accounts receivable supporting the facility can be used exclusively to procure gas and electricity for PG&E's customers at the discretion of PG&E or the Commission.

10. As set forth in FOF 14 and COL 17 of D.04-10-037, PG&E should be granted authority under Section 851 to issue FMBs as primary obligations. If a default occurs and title to any PG&E property, franchise, permit, or right that is necessary or useful in the performance of PG&E's duties to the public is transferred pursuant to FMBs, the thing transferred should continue to be used to provide utility services to the public until the Commission authorizes otherwise.

11. The following Order should be effective immediately so that PG&E may issue as soon as possible the debt and preferred stock authorized therein.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision (D.) 04-10-037 filed by Pacific Gas and Electric Company (PG&E) is granted pursuant to Public Utilities Code Sections 816 *et seq.*, and 851 to the extent set forth in the following Ordering Paragraphs (OPs). The petition is denied in all other respects.

2. Long-term debt and preferred stock issued pursuant to D.04-10-037, as modified by this Order, shall not be deemed void if PG&E fails to comply with the capital structure condition in OP 4 of D.04-10-037.

3. PG&E may issue long-term debt and preferred stock authorized by D.04-10-037 to replace short-term debt previously issued to finance capital expenditures.

4. PG&E may seek to renew its accounts receivable credit facility when it expires in 2007 if PG&E can demonstrate at that time that the accounts receivable supporting the facility can be devoted exclusively to the procurement of gas and electricity for PG&E's customers at the discretion of PG&E or the Commission.

5. PG&E may issue First Mortgage Bonds (FMBs) pursuant to D.04-10-037 as primary obligations. If a default occurs and title to any PG&E property, franchise, permit, or right that is necessary or useful in the performance of PG&E's duties to the public is transferred pursuant to FMBs, the thing transferred shall be used to provide utility services to the public until the Commission authorizes otherwise.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.